

STATE OF TENNESSEE

Office of the Attorney General



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Reply to:

Consumer Advocate and Protection Division  
Post Office Box 20207  
Nashville, TN 37202

May 13, 2004

Honorable Deborah Taylor Tate  
Chairman  
Tennessee Regulatory Authority  
460 James Robertson Parkway  
Nashville, Tennessee 37243

**IN RE: CONSUMER ADVOCATE AND PROTECTION DIVISIONS  
RESPONSES TO BELL SOUTH TELECOMMUNICATIONS, INC.'S  
SECOND SET OF DISCOVERY REQUESTS**

**Docket No: 03-00391**

Dear Chairman Tate:

Enclosed is an original and thirteen copies of the Consumer Advocate and Protection Division's Responses to BellSouth Telecommunications, Inc.'s Second Set of Discovery Requests. Please file same in this docket. Copies are being sent to all parties of record.

Should you have any questions, please contact me at 615-532-2590. Thank you.

Sincerely,

A handwritten signature in cursive script, reading "Joe Shirley".

Joe Shirley

Assistant Attorney General

CC: All Parties of Record.

**IN THE TENNESSEE REGULATORY AUTHORITY  
NASHVILLE, TENNESSEE**

**IN RE:**

**PETITION FOR EXEMPTION OF  
CERTAIN SERVICES**

**DOCKET NO. 03-00391**

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**CONSUMER ADVOCATE AND PROTECTION DIVISION'S  
RESPONSES TO BELL SOUTH TELECOMMUNICATIONS, INC.'S  
SECOND SET OF DISCOVERY REQUESTS**

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Comes now Paul G. Summers, Attorney General and Reporter for the State of Tennessee, through the Consumer Advocate and Protection Division of the Office of the Attorney General ("Consumer Advocate"), and hereby submits the following responses to the second set of discovery requests propounded by BellSouth Telecommunications, Inc. ("BellSouth"):

**INTERROGATORIES**

**1. Please state and explain the extent to which you will contend in this docket that intraLATA toll service is or is not open to competition in Tennessee. Include in your response every aspect in which you will contend that intraLATA toll service is not competitive in Tennessee.**

**Response:** The Consumer Advocate will not contend that the intraLATA toll market is not "open to competition" if this term is taken to mean that there are numerous intraLATA toll service providers operating in the toll market in Tennessee and that there is some level of competition existing among these toll providers. At this point in time, it is unknown whether the Consumer Advocate will contend that the level of existing and potential competition is an effective regulator

of the price of intraLATA toll service in Tennessee. *See* Tenn. Code Ann. § 65-5-208(b). The Consumer Advocate has not completed its discovery and investigation into the issue of whether competition is an effective regulator of price for intraLATA toll service. The Consumer Advocate will supplement this response once it concludes its review and analysis. (Within the context of this docket, the TRA may also appropriately consider whether the public interest and regulatory policies are served by exempting intraLATA toll service from all or a portion of certain regulatory requirements. *See* Tenn. Code Ann. § 65-5-208(b)).

**2. In reference to your response to BellSouth's first set of discovery requests, Interrogatory No. 8, please state any and all reasons why you would contend in this docket resale of intraLATA toll service cannot be effectuated by reference to a published price list, rather than a published tariff rate in Tennessee. Include in your response any administrative factual or legal issue you will raise in this docket regarding the use of a publicly-filed price list rather than a publicly-filed tariff with respect to the effectuating of resale.**

**Response:** Federal law requires incumbent carriers such as BellSouth and Citizens Telecommunications Company of Tennessee, LLC ("Citizens") to offer intraLATA toll service to competitors at wholesale rates established by the TRA. *See* 47 U.S.C.A. §§ 251(c)(4) and 252(d)(3). In establishing its resale rules, the Federal Communications Commission recognized that the incumbent carrier's underlying retail tariffs constitute a key component of the federal resale system. *See Local Competition Order* at ¶¶ 872, 939, 953. In addition to price, tariffs may contain other terms and conditions of service, which, if reasonable and nondiscriminatory, resellers must generally honor when reselling the incumbent's service to its own end-user customers. Additionally, in establishing the wholesale rate for the retail service offerings of BellSouth and United Telephone-

Southeast, Inc. (“United”), including intraLATA toll service, the TRA ordered that “the wholesale discount be, and hereby is, established as a set percentage off the tariffed rates”. *Avoidable Costs Order* at p. 7 (*footnote omitted*).

Accordingly, the resale agreements executed by and between incumbents and resellers incorporate the incumbent’s retail tariffs in certain key provisions. For instance, the Resale Agreement Between BellSouth Telecommunications, Inc. and QuantumShift Communications, Inc. filed in TRA Docket No. 04-00003 states: “The telecommunications services available for purchase by QuantumShift for the purposes of resale to QuantumShift’s End Users shall be available at BellSouth’s tariffed rates less the discount set forth in Exhibit E to this Agreement and subject to the exclusions and limitations set forth in Exhibit A to this Agreement.” Resale Agreement, Attachment 1, p. 3 available on the TRA website at [www2.state.tn.us/tra/dockets/0400003.htm](http://www2.state.tn.us/tra/dockets/0400003.htm). This agreement further states: “Subject to effective and applicable FCC and Commission rules and orders, BellSouth shall make available to QuantumShift for resale those telecommunications services BellSouth makes available, pursuant to its General Subscriber Services Tariff and Private Line Services Tariff, to customers who are not telecommunications carriers.” *Id* at pp. 3-4. Similar such provisions are found in other resale agreements executed by BellSouth. See, e.g., resale agreements filed in TRA Docket Nos. 03-00409, 02-00235, 01-00133, 00-00735, and 99-00364. In addition, the resale agreements of other incumbents incorporate the incumbents’ tariffs. See, e.g., resale agreements executed by Citizens Telecommunications Company of Tennessee, LLC filed in TRA Docket Nos. 03-00308, 01-00819, 01-00441, and 00-00907. All resale agreements referenced herein are available on the TRA’s website at [www.tennessee.gov/tra](http://www.tennessee.gov/tra).

Given that federal and state authorities as well as executed resale agreements contemplate

a system of resale tied directly to the incumbent's retail tariffs in the manner described and referenced above, the Consumer Advocate may contend that federal resale policies are better served by the continuation of tariffing requirements for the services that BellSouth seeks to exempt from certain regulatory requirements. The Consumer Advocate may contend that the de-tariffing of these services raises the following issues and concerns with respect to an incumbent carrier's federal resale obligations which the TRA should consider in any decision regarding the tariffing requirements of intraLATA toll services: (1) the transparency of the resale process absent retail tariffs that contain expressed prices, terms and conditions of the services that the incumbent offers to its end user customers; (2) the incumbent carrier's obligation to file and support retail service rates in lieu of present tariffing requirements; (3) the determination of the appropriate wholesale rate for retail services offered at price band ranges; (4) the potential effect that de-tariffing could have on existing resale agreements that incorporate the incumbent's retail tariffs in certain key provisions; (5) the extent that an incumbent could impose terms and conditions of service on the reseller or the reseller's end user customers absent the incumbent's retail tariffs that contain terms and conditions of service other than price; and (6) the continuation and continued availability of resale of all the retail services presently offered as described in the incumbent's retail tariffs.

**3. With respect to your response to BellSouth's first set of discovery, Interrogatory No. 8, and specifically your statement on page 6 of your responses, "In addition, tariffs provide published information that consumers find valuable", please state every fact upon which your conclusion is based. Include in your answer every individual (whether residential or business) consumer of whom you are aware who has expressed a view that such consumer finds tariffs valuable. Include in your answer every example of which you are aware of a consumer**

**actually referring to a published tariff in Tennessee. Please describe the analysis or investigation in which you have engaged to determine whether and how consumers use tariffs.**

**Response:** The Consumer Advocate has not conducted a formal or scientific poll of consumers regarding the extent of their reference to tariffs and, therefore, is unaware of specific cases where consumers have referred to tariffs or obtained superior information from reference to tariffs as compared with reference to other company information. However, the Consumer Advocate remains committed to the proposition that publicly-filed tariffs provide consumers with notice and information about the terms and conditions of service. As stated by the Tennessee Court of Appeals, “[a] tariff is the schedule of prices and regulations for a particular service which is filed with the Commission and serves as the official published list of charges, terms and conditions governing the provision of the service or facility . . . [and] functions in lieu of a contract between an end user and a service provider.” *BellSouth Telecom. Inc. v. Bissell*, 1996 WL 482975 at \*1, fn 1 (Tenn. Ct. App. 1996). Accordingly, tariffs essentially define the contractual relationship between the customer and the company.

Without the transparency and objectiveness of tariffs, the information available could shrink to a level of dependence on company sales information and advertisements, which may not contain specific and complete information about the terms and conditions of service, or subsequent changes to those terms and conditions that alter the company-customer relationship.

**4. With respect to the statement contained in your response to BellSouth’s first set of discovery, Interrogatory No. 8, “By consulting the tariffs themselves or information sources that utilize tariff data to summarize competing calling plans, consumers are better able to select the plan that best fits their individual calling patterns and needs”, please state all**

**examples of which you are aware of consumers in Tennessee obtaining superior information from reference to tariffs as compared with reference to other company information, such as advertising, website, or use of customer service representatives.**

**Response:** See response to Interrogatory No. 3.

**5. Regarding the statement contained in your response to BellSouth's first set of discovery, Interrogatory No. 8, "Only after such requirements are abrogated will actual harm accrue", please explain the meaning of this statement. Include in your answer an explanation of whether you contend that actual harm will accrue to consumers if tariffing requirements are removed pursuant to exemption of services under the statute. Also include in your answer an explanation of how you concluded that such harm would accrue, all facts on which such conclusions are based, all legal or economic theories on which such conclusion is based and any studies or investigations or any other analytical process in which you have engaged to reach such conclusion.**

**Response:** Within the context of the Consumer Advocate's response to BellSouth's first set of discovery, Interrogatory No. 8, the meaning of the statement, "Only after such requirements are abrogated will actual harm accrue" is further explained as follows: Regulatory requirements that presently exist to foster competition in telecommunications services markets and to help prevent harm to consumers will no longer function to foster such competition or prevent such harm if they are dissolved. Such laws and regulations provide the basis for competing carriers and consumers to file complaints against potential anti-consumer and anti-competitive practices of a carrier. If abrogated, a carrier could engage in the anti-consumer and anti-competitive acts proscribed by these requirements without challenge from any person seeking to have their claims redressed through such

laws and regulations. To the extent that BellSouth and Citizens seek to exempt intraLATA toll services from certain regulatory requirements, it is apparent that, at a minimum, BellSouth and Citizens desire the option to engage in practices that are currently proscribed by such requirements.

**6. Please identify and describe with specificity each contact you have had with any independent company operating under a Primary Carrier Plan relating to the effect of exemption of intraLATA toll service on the operation of any intraLATA toll settlement arrangement in Tennessee. For each such communication, please state with specificity the substance of such communication.**

**Response:** The Consumer Advocate objects to this interrogatory on the ground that it calls for information protected by the attorney work product doctrine and the attorney-client privilege. Communications with any independent company operating under a Primary Carrier Plan relating to the effect of exemption of intraLATA toll service on the operation of any intraLATA toll settlement arrangement in Tennessee would be made as part of trial preparations and in anticipation of litigation and are, therefore, protected under Rule 26 of the Tennessee Rules of Civil Procedure.

**7. Please identify the extent to which you believe that customers can and currently do switch from one toll carrier to another, whether you believe the expense associated with such changes is excessive, and whether you contend that such changes between carriers result in interruption of service. Include in your answer each and every fact upon which your conclusions are based.**

**Response:** The Consumer Advocate is aware from its resonant knowledge that customers can and do switch from one toll carrier to another. The Consumer Advocate does not have any information or assumptions concerning the extent that customers currently do switch from one toll



carrier to another. The Consumer Advocate believes that customers may incur expenses associated with switching service from one toll carrier to another. Such direct switching charges may include PIC-change charges as well as termination charges associated with cancellation of current service arrangements, which are known to the Consumer Advocate through the various tariffs and contract service arrangements filed by telecommunications carriers. The Consumer Advocate does not have any information concerning whether such switching charges are excessive; however, it assumes, as a general matter, that these charges could be considered excessive to the extent that they disincline customers to actually switch toll service providers. The Consumer Advocate does not have any information or assumptions concerning whether changes between toll carriers have resulted or will result in interruption of service.

**8. Please state each factor you believe to be relevant in defining the market for the provision of intraLATA toll service in Tennessee. Include in your answer an explanation of why you believe each factor is relevant to the determination of this market. For the purposes of this request, the “market” means all sources available to Tennesseans for the placing of an intraLATA toll call.**

**Response:** The Consumer Advocate contends that relevant factors in defining “the market” for intraLATA toll service in Tennessee include the following: (1) the total revenue received (2) from end user customers (3) for the total minutes of long distance calling (4) provisioned within Tennessee LATAs (5) through services and products (6) offered by all competing entities. These factors are supported by traditional definitions of the term “market”, including the definition of “market” published in Black’s Law Dictionary (6th ed.) at page 669, which states in pertinent part that a market is “the geographical or economic extent of commercial demand . . . [and] the demand

there is for any particular article.” Within the context of this docket, the TRA may choose to specially examine and evaluate market factors associated with the wireline telecommunications service providers that are subject to the agency’s jurisdiction and regulatory control and for which exemption from certain regulatory requirements may be granted.

### **REQUESTS FOR PRODUCTION OF DOCUMENTS**

**1. Please identify and produce all documents relating to or evidencing in any way communications between the Consumer Advocate Division and any independent company in Tennessee relating to the intraLATA toll settlements process or the exemption of services sought in this docket.**

**Response:** The Consumer Advocate objects to this request on the ground that it calls for information protected by the attorney work product doctrine and the attorney-client privilege. Documents relating to or evidencing in any way communications with any independent company in Tennessee relating to the intraLATA toll settlements process or the exemption of services sought in this docket would be made as part of trial preparations and in anticipation of litigation and are, therefore, protected under Rule 26 of the Tennessee Rules of Civil Procedure.

**2. Please identify and produce all documents related to or on which you have relied in formulating your contentions in this docket. To the extent that you have relied upon documents or information contained in the “public record” as referenced in your response to BellSouth’s first set of discovery Request No. 13, identify which documents or information in the public record you have relied upon.**


**Response:** The Consumer Advocate has referred to the following informational sources and authorities, all of which are referenced in the Consumer Advocate’s responses to BellSouth’s first

set of discovery and all of which are easily accessible by BellSouth:

1. Tenn. Code Ann. §§ 65-5-208, 65-4-115, 65-4-122 and 65-5-204(a).
2. 47 U.S.C.A. §§ 201, 202, 251, 252, 253, 271, 272.
3. *Local Competition Order*, FCC 96-325 (Aug. 8, 1996).
4. *Avoidable Costs Order*, TRA Docket No. 96-01331 (Jan. 17, 1997).
5. *Order Denying BellSouth's Petition for Appeal and Affirming the Initial Order of Hearing Officer*, TRA Docket No. 00-00523 (May 9, 2001)
6. *Initial Order of Hearing Officer for the Purpose of Addressing Legal Issues 2 & 3 Identified in the Report and Recommendation of Pre-Hearing Officer Filed on November 8, 2000*, TRA Docket No. 00-00523 (June 28, 2002).

RESPECTFULLY SUBMITTED,

PAUL G. SUMMERS, B.P.R. #6285  
Attorney General  
State of Tennessee

  
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(615) 532-2590

Dated: May 13, 2004

## CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served via facsimile or first-class U.S. Mail, postage prepaid, on May 13, 2004, upon:


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